



THE STATE TRANSPARENCY AND ACCOUNTABILITY REFORM (STAR) COMMISSION

Final Report

Prepared for:
Larry Hogan, Governor
Bill Ferguson, President of the Senate of Maryland
Adrienne A. Jones, Speaker of the House of Delegates

December 1, 2021

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In Memoriam - Rhonda Ray

It is with great sadness that the STAR Commission reports that Rhonda Ray passed away on July 19, 2021. With her more than 25 years of state service and experience, Ms. Ray was designated to serve as the representative for the Department of Commerce and brought a tremendous amount of knowledge and professionalism in her contributions to the Commission. The STAR Commission expresses its heartfelt condolences to her family, friends, and colleagues. She will be greatly missed.

Letter from the Chair

Dear Governor Hogan,

On behalf of the State Transparency and Accountability Reform Commission, I am pleased to transmit to you the Commission's final report.

The Commission was created by executive order on the 16th day of December 2020. We were tasked with the following:

To ensure adherence to the highest ethical standards, and identify commonalities that support unified policies and regulations for standardized oversight and accountability, the Commission shall review and investigate the operations and structures of the following State instrumentalities ("quasi-governmental agencies"):

(1) Maryland Agricultural and Resource-Based Industry Development Corporation;

(2) Bainbridge Development Corporation;

(3) Canal Place Preservation and Development Authority;

(4) Maryland Economic Development Corporation;

(5) Maryland Clean Energy Center;

(6) Maryland Environmental Service;

(7) Maryland Food Center Authority;

(8) Maryland Health and Higher Educational Facilities Authority;

(9) Maryland Automobile Insurance Fund;

(10) Maryland Stadium Authority;

(11) Maryland Technology Development Corporation;

(12) Northeast Maryland Waste Disposal Authority;

(13) Maryland Industrial Development Financing Authority;

(14) Maryland Venture Capital Trust; and

(15) Any others, as deemed appropriate by the Commission, that are:

(a) body politic and corporate, or similarly independent; or

(b) otherwise authorized to:

- i. bill their costs and expenses to persons or governments subject to their jurisdiction;
- ii. pay commissions or bonuses to employees or agents;
- iii. seek private grants, gifts, bequests, endowments, and legacies, or other contributions from the private sector;
- iv. enter into private sector cooperative agreements; or
- v. acquire, hold, sell, convey, assign, lease, transfer, or dispose of property, or enter into contracts incident thereto, independently of the Board of Public Works or Department of General Services, or are otherwise exempt from the General Procurement Law of the State.

For each quasi-governmental agency, the Commission shall study and if appropriate make recommendations about:

- (1) Term limits for members or directors;
- (2) Employees serving as members or directors;
- (3) Requirements for financial and conflict-of-interest disclosures;
- (4) Standards:
 - (a) To maintain and improve the efficiency and effectiveness of governmental operations; and
 - (b) For ethical responsibilities regarding:
 - i. out-of-state travel;
 - ii. bonuses and severance pay;
 - iii. conflicts of interest; and
 - iv. reimbursable expenses
- (5) Instruction on ethics;
- (6) Independent financial and compliance audits;
- (7) Preparation of budgets;

(8) Periodic reports on activities, findings, accomplishments, business transactions, and financial condition;

(9) The balance between independence and accountability necessary for efficient or effective operations; and

(10) Any other matter that the Commission considers appropriate and relevant.

The Commission has met monthly with additional breakout meetings in the last few months. We interviewed all of the agencies listed, entertained public comment and testimony, and profited from other state affiliated organizations and industry professionals.

We deliberately focused on a proactive posture while acknowledging that recent events had brought to the forefront the need for such a Commission. The very first charge of your executive order stated what we tried to keep as our guiding focus, “The people of Maryland deserve a government that operates with transparency and integrity.” The other charge that served as a North Star was, “It is essential that there be adequate safeguards and oversight of quasi-government agencies to ensure that they operate consistently with the public trust.”

It is to these ends that the Commission worked diligently in a collaborative manner to restore and ensure that current and future entities would continue to earn that sacred public trust. We can only provide guiding principles and entrust to future agencies and their personnel the light that shines on the path to true public service and sacrifice for the greater good for the citizens of Maryland.

Herewith, please find our recommendations and guidelines to answer the charge with which we were commissioned. We are proud of the effort and hope that it may prove timeless in the ability to inform and instruct future governors and members of the legislature. These serve almost as guardrails that are placed in the safe place of the road to prevent one from the dangerous parts of the pathway.

We must be clear that a major component of the success of future quasi-governmental agencies will be the leaders and board members. While there is mention of ethics and integrity, we also must highlight that there is no way to legislate or guarantee that all will act in ethical manners or with integrity. Our world has come to consider “relative” ethics and fluid truth claims. This has been a challenge since the beginning of time. I reflect on the writings of Aristotle who said, “the one who is at work in accordance with virtue will act and act well.” We have endeavored to provide means for future individuals to work for the good of the people of Maryland. When they choose not to, we have hoped to design mechanisms that will shine a light on those activities.

We are grateful for the opportunity to commit to the work with which you requested. We are thankful for all who participated and want to specifically express our appreciation to the staff of

the Office of the Governor. Specifically, we would like to point out Erin Chase for her dedication and diligence.

God bless,

Andrew A. Serafini
Chair

cc: The Honorable Bill Ferguson, President of the Senate
The Honorable Adrienne A. Jones, Speaker of the House of Delegates

Executive Summary

Governor Larry Hogan’s State Transparency and Accountability Reform (STAR) Commission was established under Executive Order 01.01.2020.05, *see Appendix A*, in December 2020 to review the operations and structures of state instrumentalities that operate as quasi-governmental agencies (QGA).¹ The governor announced this initiative after it came to light in 2020 that the Maryland Environmental Service (MES) had longstanding practices of paying large bonuses, expense reimbursements, and severance packages to top executives. Unfortunately, this was not the first instance of unethical behavior occurring within a quasi-governmental agency. When announcing the creation of the STAR Commission, Governor Hogan stated: “since taking office, our administration has pushed to restore integrity and accountability to our state government and to ensure that the best interests of Maryland’s citizens are being represented fairly and honestly. We need to take a long and hard look at the way that our quasi-governmental agencies operate, and focus on making real and systemic reforms.” These agencies are designed to fulfill public purposes by operating with structures that provide the necessary managerial flexibility to ensure optimal performance. It is the state’s duty to ensure that these agencies operate with the highest integrity, and provide services in accordance with their mission, while maintaining public trust. The commission reviewed and investigated the operations of 13² of Maryland’s quasi-governmental agencies and has developed recommendations on reforms regarding standards for oversight, transparency, and accountability measures. Its recommendations may include term limits, requirements for financial and conflict-of-interest disclosures, independent audits and reports, and other standards to promote efficiency, effectiveness, and ethical conduct.

The Commission consisted of members of the governor’s cabinet or their designees, members of the Maryland Senate and House of Delegates, experts in ethics and financial management, and two members of the public, and was chaired by former Washington County State Senator Andrew Serafini.

Tasked with reviewing 13 of the state’s quasi-governmental entities, the Commission created a uniform and comprehensive questionnaire for each agency to complete that would provide key insights into seven areas of inquiry, i.e., general agency operations, audit practices, financial management, board structure, and governance and accountability. After reviewing each agency’s responses and supporting documents, they were invited to present and answer questions from the Commission’s members at a public meeting. The Commission also heard directly from Maryland constituents on their concerns regarding the state’s quasi-governmental entities, particularly the Northeast Waste Disposal Authority.

Additionally, the Commission had the opportunity to hear from a number of invited speakers and subject matter experts, including State Senator Clarence Lam and now former Delegate Erik Barron, in their roles as co-chairs of the Joint Committee on Fair Practices and State Personnel, on

¹ The governor’s executive order uses the term “quasi-governmental agencies.” The Commission used that term, independent agencies, and instrumentalities interchangeably to generally refer to the entities identified within the executive order and similarly structured entities.

² The governor’s executive order listed Maryland Venture as an entity to review, but it was previously absorbed by TEDCO and is considered defunct, thus the Commission did not review them.

their investigative findings related to MES; Michael Peregrine, an attorney who specializes in corporate governance; Jennifer Allgair, executive director of the Maryland Ethics Commission; and Rebecca Snyder, executive director of the Maryland-Delaware-DC Press Association. The Commission also heard from fellow members Delegate Marc Korman on reform legislation relating to MES proposed and passed during the 2021 legislative session of the Maryland General Assembly, as well as Dr. Linda Singh, who served as the interim executive director and CEO of TEDCO, on her experience leading and implementing reforms for one of the entities the Commission was responsible for reviewing. Each of the speakers that the Commission heard from provided crucial information that would help inform the Commission's recommendations for reforms.

To help promote discussion and the development of recommendations, the Commission utilized a subcommittee structure to look at the seven areas of inquiry: General, Audit, Financials, Board, Governance and Accountability, Compensation and Performance, and Entity Status, presented in the questionnaire and discussions. The breakout sessions allowed for an in-depth discussion of the potential recommendations to bring to the next full Commission meeting for further discussion and voting.

The recommendations developed by the Commission are consensus-based and could largely be applied not only to the 13 entities that the Commission reviewed, but also to the state's remaining entities that operate in a quasi-governmental fashion. The Commission has also identified some recommendations as best practices that should be administratively implemented by applicable entities, or instituted when new QGAs are created by executive action or statute. The recommendations, which will be presented below, were ultimately formulated upon the following principles:

1. We, the Commission, believe that the legislative or executive branch created QGAs can provide valuable services to our citizens. They also allow for an entity to specifically target an issue or goal for improvement or resolution.
2. We believe a key to effective QGA's is a strong governing board with diverse members that understand their fiduciary responsibilities and carry them out with integrity, accountability, attentiveness, consistency, and transparency.
3. We believe that our commission was charged with creating suggestions that can serve as guidelines for future considerations on the efficacy of QGAs.
4. We believe that despite our best efforts, in the end it will depend on employees and board members creating accountability and practicing ethical and honest commitments to carrying out the goals and charge of each entity. We can neither legislate nor mandate moral and ethical behavior. That being said, we believe that there should be some guardrails in place.
5. We believe that each agency should perform a self-evaluation to ensure that it has not drifted from its legislated charge. It is valuable for periodic legislative review of these entities to evaluate whether they should continue as a QGA, move to a typical governmental agency, move to a private entity, or possibly dissolve entirely.
6. Ultimately, we have a representative form of government and as such it is up to the governor and legislature, as agents of the state's citizenry, to inspect and confirm that these

QGAs are operating according to their specified charge and are doing so with integrity and accountability.

7. At a minimum of every eight years, all QGAs should appear before a legislative committee that most reflects their mission to ensure that elected officials are aware and understand the value of their continued operations. For example, a QGA that is education based should appear before the House Ways and Means and Senate Education, Health, and Environmental Affairs committees. This review hearing is in addition to the legislative budget hearings recommended later in the report.

The Commission submits the following 31 recommendations and four best practices, which were adopted unanimously, for consideration:

General

1. Agencies should develop a strategic plan and review it annually.
2. A common bank of cross-governmental resources should be established to ease the burden, and enhance the fulfillment, of transparency and accountability initiatives for smaller agencies.
3. Agencies should, generally, use state policies as a baseline when determining their own policies and by-laws,
4. Agencies should have a public email address on their website for the public to submit questions, comments, and concerns.
5. Each agency should submit a detailed annual budget to the Department of Budget and Management (DBM), even if they are considered a non-budgeted agency.
6. Statutory provisions on governing boards should allow for board positions for the appropriate professionals, which will increase diversity of experiences.
7. The agency and the Office of Legislative Audits (OLA) should designate someone within the agency or board, who is not the executive director, to receive any whistleblower complaints that involve the executive director.
8. The Department of Legislative Services (DLS) should explore the inclusion of evaluation criteria – based on the work of this Commission – in fiscal notes when legislation seeks to create new agencies.
9. Unless otherwise specified in statute, agencies should have the option of using the Office of the Attorney General or other legal counsel.

Boards and Board Responsibilities

10. The governing board should establish a designee to review and approve the executive director's expenses. The executive director must follow the agency's uniform expense reimbursement policies.
11. Each governing board should develop a conflict of interest policy or, in the alternative, ensure that QGAs are required to comply with the State Public Ethics Law governing conflicts of interest.
12. The board is responsible for oversight of the agency, including the annual performance review of the executive director.
13. Compensation plans for the executive director and any other management personnel should be approved by the board.

14. The board should ensure that appropriate guidelines are in place regarding bonus plans, employee incentive plans, severance packages or similar benefits, and deferred compensation arrangements.
15. The board should adopt or readopt all policies governing issues such as severance packages, bonuses, tuition reimbursements, expense reimbursements, travel, etc.
16. To the extent practicable, each board should have an audit committee.
17. Boards should undergo comprehensive onboarding training, as well as transition planning and off boarding evaluation.
18. The board should undergo a routine, independent, board assessment, which should occur at least every five years, and annually do a self-assessment.
19. All boards should be subject to the Open Meetings Act and its exceptions.
20. Boards should implement staggered terms, as well as term limits so a board member serves no more than 12 years.

Audits

21. All agencies should have a financial statement audit conducted by an independent CPA firm in accordance with GAAP.
22. The CPA firm should simultaneously conduct an audit of the agency's financial internal controls.
23. The executive director and board should take timely action in reacting to the recommendations contained in the internal controls review report and management letter, and those actions should be reported to the Legislative Policy Committee (LPC), OLA, and DLS.
24. To the extent possible, the CPA firm for each agency should be changed at least every 10 years, which is similar to the SEC's rule for audit firms of publicly traded entities.
25. Annual audits and financial statements should be submitted to LPC, OLA, DLS, and the board.

Transparency

26. Annual financial statements and audit reports should be posted visibly on the agency's website.
27. Each agency should be subject to at least a biennial legislative budget hearing, and more frequently if requested by the legislature.
28. All boards, to the extent practicable, should livestream and archive their public meetings, post the agenda, materials and minutes for each meeting.

Agency Oversight

29. Each agency should undergo a periodic review conducted by the legislature, at least every eight years, similar to a "sunset review," to assess statutory compliance with the mission and vision. The reviews should not endanger an agency's current outstanding bonds or ability to use bonds.
30. Consider the creation of an inspector general position to serve all of the state's QGAs and oversee all of the audit and reporting functions, both financial and non-financial.
31. When assessing an agency's future and the creation of new agencies, refer to *Appendix C Questions for Determining Continuance or Creation of a QGA* for questions and factors that should be considered.

Additional Best Practices

1. In addition to livestreaming meetings, agencies should post written meeting minutes online.
2. The executive director should only serve on the board as an ex officio and nonvoting member.
3. Standardize the name of all agency heads to be “executive director,” unless otherwise determined by the legislature that a different title is appropriate.
4. Each board should have at least one member with experience and/or expertise in reading and understanding financials.

Throughout the report, the term “executive director” refers to the agency head, regardless of title.

Further details about each recommendation will appear later in the report.

All Commission meetings were held virtually and in accordance with the Open Meetings Act. Livestream video of each meeting, along with the meeting minutes can be viewed at <https://governor.maryland.gov/star-commission/>.

Findings

In recent decades, both at the federal and state levels, governments have become increasingly reliant on the use of hybrid organizations for the implementation of public policy functions and solutions historically handled by executive agencies and instead assigned to new entities that straddle the line of being independent but also part of the government. Maryland is not unique and has a number of QGAs with functions that fill important gaps in service delivery in the state and span across nearly every policy area. No two QGAs are alike, and the Commission's research has shown that the statutes for these entities vary greatly when compared to one another, and the QGAs could greatly benefit from the implementation of common sense reforms to ensure that they are each subject to the same basic laws and regulations that state government entities are required to follow which promote better public trust and accountability, such as the Open Meetings Act, state public ethics laws, and procurement regulations, etc. To the extent possible, the Commission found that the recommendations set forth herein should not be overly prescriptive and burdensome.

When reviewing the entities listed in the executive order, the Commission learned that many of Maryland's quasi-governmental agencies utilize this unique structure to facilitate bonding authority, whereby they are able to issue tax-exempt bonds to finance capital projects and not rely on the state's General Obligation bonds or fall under the state's 15-year bond limit or Capital Debt Affordability process. Under this framework, the bonds are revenue bonds sold on the basis of the credit of the institutions for which they are provided. When contemplating changes to these entities, it is crucial that recommendations do not threaten the status of their ability to issue and service bonds.

A recurring theme throughout the Commission's work was that of empowering the governing board for each entity to make decisions and to hold the agency and themselves accountable. Board members need to understand the responsibilities of participating in this leadership role, and need to exercise appropriate oversight for the entity for which they serve. The need for dedicated and diverse board members has to be carefully balanced because many of these board positions are unpaid or receive minor stipends. In order to ensure board members are able to commit to their duties and provide adequate oversight, board training should be an integral part of the onboarding process following the appointment of new members. Boards should play an active role in developing policies and procedures not only for the board's operations, but also for the entity, such as expense report reimbursement, budget approval, and audit reviews. These boards do not have shareholders like private and nonprofit boards do, so they have to be highly competent and ethical individuals who understand the gravity of the dedication required to serve as a member of a governing board. The boards are ultimately responsible for providing oversight that ensures that the agency is financially sound, and acting in accordance with all laws, and regulations, as well as internal by-laws. The boards must be accountable for the actions of the agency. Further, the Commission found that the size and tenure of board members can vary greatly. Of the entities that the Commission looked at, the number of board members ranged from seven to 17 members, and only two entities have statutorily required term limits. The size of the board and tenure of board members can impact a board's effectiveness, and the Commission discussed how smaller board sizes could potentially spur and promote active participation in board deliberations, and term limits paired with staggered terms could allow for new insights while maintaining institutional knowledge.

Many of the QGAs that the Commission was tasked with reviewing are not subject to the same level of budget submission and oversight that many traditional units of the executive branch are. As previously mentioned, some of these entities do not receive direct appropriations from the state government, but may use state and local tax dollars for various projects. The entities are referred to as non-budgeted agencies. Generally, the state's executive branch cabinet agencies submit their annual budgets to DBM because they receive annual appropriations in the state budget. The budgetary information for cabinet agencies provides an in-depth amount of information regarding the positions, contracts, and expected expenditures. The budget, when released by the governor each January, is then reviewed by the Maryland General Assembly and DLS. The legislature's budget committees review each budget individually and conduct hearings to discuss the agency's budget request. This provides a high level of insight into the agency's spending plan for the year that many of the quasi-governmental agencies are not subject to. Of the 13 entities that the Commission reviewed, three of them provided budgetary information to DLS as a non-budgeted agency, and one's budget was included within the Department of Commerce's budget submission. The remaining nine entities do not submit their budgets to DLS. Five of the entities submit their budgets to DBM, and one entity's budget is included within the Department of Commerce's submission. The remaining seven entities do not annually submit their budgets to DBM.

Audits were another area that the Commission was greatly interested in, and found that while all entities received annual external financial audits, not all were subject to fiscal and compliance audits conducted by the DLS' OLA. OLA conducts their audits on a rotational basis approximately every three to four years. The entities that OLA audits are dictated by statute, and generally, they will not conduct an audit for an agency not listed in the statute unless requested by the legislature. Further, some entities have their own internal auditor and/or a board audit committee. Recent reform legislation for MES now requires an assessment of the board be conducted every five years and specifically review certain aspects of the board, such as training, makeup, demographics, and operations. The assessment has some characteristics of a performance audit, as opposed to a financial audit. These compliance assessments can provide insightful information into not only the finances and internal controls, but compliance audits can assess whether the entity's policies, laws, and regulations are being properly implemented. The Commission discussed this issue at length, and determined that various assessments that provide a comprehensive overview of all aspects of an entity can help identify deficiencies. In addition, however, there should be a mechanism to ensure that corrective actions are implemented upon receipt of the audit's findings.

Transparency is a fundamental pillar of democracy because it promotes accountability and allows citizens to access information about the actions and decisions the government makes. Transparent government helps to establish and build trust, as well as promotes accountability. Increasing transparency was a prominent theme in the Commission's work, and members agreed that more effort should be put into ensuring that these governmentally created entities are being responsive to the needs of the public and appropriately achieving their mission. Many of the entities the Commission reviewed are subject to the Open Meetings Act, a statute that requires government's public bodies to hold their meetings in public, provide advanced public notice of meetings, and allow the public to view the meeting minutes of a public body. To achieve this goal, and in the era of COVID-19, many of the state's public bodies hold their meetings virtually and archive the livestream of the meeting on their website, ensuring that the public can watch the hearing at their

leisure. This also applies to approved meeting minutes. Moving forward, the Commission determined that quasi-governmental entities should strive to provide as much transparency as possible by providing public, online access to meeting materials, financials, and audits, among other items. Additionally, as new technologies emerge, all units of state government should seek to understand how it can help increase transparency to the public.

Recommendations

The Commission, after hearing from the agencies listed in the executive order, and evaluating recommendations that could be feasible for adoption and implementation identified the following 31 recommendations and four best practices for the executive and legislative branches consideration. QGAs could also implement many of these recommendations administratively.

General

1. Agencies should develop a strategic plan and review it annually.
 - Each agency should develop both a public and internal strategic plan, which should include, at a minimum, performance goals and measures, mission statement, core values, SWOT (strengths, weaknesses, opportunities, and threats) analysis, action plans, yearly objectives, and long-term goals. These plans should be reviewed and updated annually to determine and evaluate progress.
2. A common bank of cross-governmental resources should be established to ease the burden, and enhance the fulfillment, of transparency and accountability initiatives for smaller agencies.
 - The size of these agencies vary widely, with some having hundreds of employees and others less than 10. The establishment of a common bank of resources can help assist the smaller agencies with the implementation of these accountability and transparency measures by spreading the financial burden related to purchases and contracts relating to items such as auditors, livestreaming platforms, and payroll processing. The cost would be shared among the participating agencies on a scalable measure, and participation should be optional.
 - Pre-packaged board best management practices and conflict of interest policies that agencies can adopt in full or use as a guideline or starting point will also reduce the burden of developing these items separately and will also provide consistency.
3. Agencies should, generally, use state policies as a baseline when determining their own policies and by-laws.
 - The state has established policies related to many issues that should be covered in an agency's own policies and by-laws. Where appropriate, QGAs should use the state's policies as a baseline to structure their own policies. The Commission understands the need for these agencies to have flexibility from some of the state's policies, such as those related to procurement; however, they should seek to align their policies with the state where possible.
4. Agencies should have a public email address on their website for the public to submit questions, comments, and concerns.
 - These agencies, which have been created by the state, should have an accessible, public email address visible on their website for members of the public to submit their questions, concerns, and comments. The email address should be regularly monitored.
5. Each agency should submit a detailed budget to DBM, even if they are considered a non-budgeted agency.
 - During the 2021 legislative session, the legislature passed a law to significantly reform MES. Included in this law is a provision that requires the agency to submit a detailed budget to DBM. DBM is responsible for determining the level of detail.

This provision of law should apply to all agencies, so that the state has a fuller understanding of an agency's use of funds and profit and loss margins to ensure proper oversight.

6. Statutes should allow for board positions for the appropriate professionals, which will increase diversity of experiences.
 - The Commission focused heavily on the importance of a competent, professional, and accountable governing board. Consider amending the QGA statutes to ensure that they allow for the appointment of diverse individuals. When considering this recommendation, it is important to not make boards too big or too restrictive on qualifications to ensure that it does not have a negative impact on the ability to recruit and appoint appropriate candidates to the QGAs governing board.
7. The agency and OLA should designate someone within the agency or board, who is not the executive director, to receive any whistleblower complaints that involve the executive director.
 - In the event that a whistleblower complaint is made to the OLA regarding an agency's executive director, OLA should be able to send the complaint to an individual, who is independent of the executive director, for review and investigation. Whistleblower complaints often involve fraud, waste, and/or abuse, and it is imperative that the first person to receive a complaint involving the executive director can proceed in a fair, ethical manner.
8. DLS should explore the inclusion of evaluation criteria in fiscal notes when legislation seeks to create new QGAs.
 - If the legislature seeks to create a new QGA, it would be helpful for DLS to provide information in the fiscal notes that accompany a piece of legislation that evaluates what the new agency is seeking to accomplish and if there are any other agencies, offices, or programs that currently achieve the same or a similar function. Moreover, it should assess whether the legislation meets the recommendations and best practices set out in this report. This will help keep the legislature informed on the various agencies that currently exist, as well as help them prevent unnecessary duplication of efforts.
9. Unless otherwise specified in statute, QGAs should have the option of using the Office of the Attorney General or other legal counsel.
 - Should an agency seek outside legal counsel, the board should approve of the use and the corresponding budget. Upon board approval, the agency should proceed using the applicable and/or required procurement process that are required.

Boards and Board Responsibilities

10. The governing board should establish a designee to review and approve the executive director's expenses. The executive director must follow the agency's uniform expense reimbursement policies.
 - A member of the board, who is independent of the executive director, should be designated to review and approve the executive director's expenses, particularly when seeking reimbursement. Whenever the executive director or other management personnel submits an expense reimbursement form, it needs to be in compliance with the agency's uniform expense reimbursement policies.

- Legislation requires the executive director of MES to present a detailed and itemized accounting and explanation of expenses incurred by the executive director and their deputy since the last board meeting that aggregate in excess of \$500³. This makes the executive director accountable for their expenses and allows for an added level of transparency and board oversight.
11. Each governing board should develop a conflict of interest policy or, in the alternative, ensure that QGAs are required to comply with the State Public Ethics Law governing conflicts of interest.
 - Conflict of interest policies are an important safeguard for governing boards. These policies help outline procedures that employees and board members must follow when a possible conflict exists between their own personal interests and the interests of the organizations. The State Ethics Commission, which administers and interprets the provisions of the state's Public Ethics Law, provides comprehensive information and training on the state's law as it relates to the conflict of interest provisions. The governing boards, many of which may already be subject to the Public Ethics Law, should adopt the state's policy, and when necessary, a board should work with the State Ethics Commission to determine what conflict of interest policy may be best and most applicable. If an agency or board determines that a more stringent conflict of interest policy may be needed, it could be created internally.
 12. The board is responsible for oversight of the QGA, including the annual performance review of the executive director.
 - The governing board must exercise strong oversight over the agency, and that must include the annual performance review of the executive director. Each board should establish the criteria and procedures for evaluating the agency head and review it annually. If a board needs assistance to determine best practices for review, they could consult an entity such as the State Ethics Commission, or outside human resources experts.
 13. Compensation plans for the executive director and any other management personnel should be approved by the board.
 - When determining what may be an appropriate level of compensation, the Commission recommends the use of a market analysis of salaries, compensation, and other benefits for the industry to ensure the agency has the ability to remain competitive with any private sector equivalent. To assist with this effort, DBM could contract out to a private entity to conduct a comparative study of the top level staff at these agencies in comparison to relevant peers, whether that be other governmental or public sector entities in Maryland and outside of the state, or where appropriate, the agency's equivalent private sector peers. Using the contractor's analysis, DBM could review the study and make recommendations.
 14. The board should ensure that appropriate guidelines are in place regarding bonus plans, employee incentive plans, severance packages or similar benefits, and deferred compensation arrangements.

³ Prior to the legislation taking effect, the current MES executive director voluntarily undertook this approach to transparency and accountability.

- The governing board should establish and annually review the guidelines to ensure that the plans and any actions related to them make sense and align with the agency's finances.
15. The board should adopt or readopt all policies governing issues such as severance packages, bonuses, tuition reimbursements, expense reimbursements, travel, etc. In particular, each governing board should examine:
- Severance packages, which should be limited to those who involuntarily leave, if given at all. Severance packages are not common within state government, so the agency should consider that when developing a policy.
 - Tuition reimbursements, including limits on the amounts that may be reimbursed.
 - Expense reimbursements, including limits on the amounts reimbursed, limits on how long after an expense is incurred it may be reimbursed, and requirements regarding the nexus between reimbursable expenses and agency functions.
 - Travel, particularly out-of-state and out-of-country travel.
 - The use of cars, laptops, cell phones, and other vehicles and devices owned by the agency, including policies on whether and how these vehicles and devices may be transferred to a departing employee.
 - Whistleblower complaint policy, and the protections afforded to a whistleblower.
 - Boards should periodically review the policies and revise as needed. The board, upon adoption or readoption of policies, should submit the policies to the LPC. Any future significant modifications should be reported to LPC as well.
16. To the extent practicable, each board should have an audit committee.
- An audit committee can serve as the entity that is the first to receive any audit reports and management letters, and is responsible for making sure that any recommendations and corrective actions are taken after any findings are presented to the committee. The committee should be made up of members of the board and hold separate meetings independent of full board meetings. The committee would also be responsible for presenting and explaining the audit results and recommendations to the full board.
17. Boards should undergo comprehensive onboarding training, as well as transition planning and off boarding evaluation.
- Boards should require a comprehensive training and/or orientation for new board members, and in particular, provide ethics training. It is important to start new board members off on the right foot with an orientation program that introduces them to the basic roles and responsibilities of serving as a board member of an agency. Included in the training/orientation should be the special issues that pertain specifically to the agency's mission, plus information on: governance policies, so all board members are reminded of their legal and fiduciary duties; accountability practices, such as the need to disclose conflicts of interest; and the responsibility to review the executive director's performance. This training should also include a review of the role of the legislative and executive branches. The board should also have transition planning and offboarding evaluation to account for board turnover, which should include succession planning that involves the board chair, agency director, and the state's Appointments Secretary to discuss talent needs for the board.

18. The board should undergo a routine and independent board assessment, which should occur at least every five years. The board should also annually conduct a self-assessment.
 - Included in the MES reform legislation was the requirement that the board undergo an independent assessment every five years. The assessment is to include a review of the board’s functions and operations, and factors such as the structure of the board; dynamics and functions; the board’s role in the agency’s short- and long-term strategy; financial reporting process; internal audit; internal controls; board’s role in monitoring the policies, strategies, and systems; and the role of the chair of the board. This has emerged as a best practice in the nonprofit sector, as illustrated by [Deloitte](#).
 - Boards should also perform an annual self-assessment to review their performance and identify any areas for improvement.
19. All boards should be subject to the Open Meetings Act and its exceptions.
 - The Open Meetings Act is a state statute that requires many state and local public bodies to hold their meetings in public, provide adequate notice of any meetings, and allow the public to review and inspect meeting minutes. Understanding that some materials discussed in meetings may be confidential, it provides exceptions under which is appropriate for a meeting to be held in closed session. The main purpose of the Open Meetings Act is to enhance transparency and accountability, and allow the public to participate in these elements of our democracy. Many agencies and their respective boards are bound to follow the Open Meetings Act as prescribed in their statutes; however, in areas where it is not abundantly clear, boards should seek to provide, to the extent possible, open meetings that allow the public to have notice of meetings and to view and participate.
20. Boards should implement staggered terms, as well as term limits so a board member serves no more than 12 years.
 - Staggered terms help provide stability as members of the board are onboarded and offboarded, and allow for a level of institutional knowledge to be retained as board turnover occurs. The implementation of term limits will provide for diverse voices and experiences to be brought to the board, which will, in turn, prevent stagnation that could result from a lack of board turnover.

Audits

21. All agencies should have a financial statement audit conducted by an independent CPA firm in accordance with GAAP.
 - The expected opinion of the financial statement should be presented “in accordance with accounting principles generally accepted in the United States of America,” i.e. GAAP. If that opinion is not possible, the details of why should be discussed with the agency’s board, as well as DBM and DLS/OLA. As previously stated, the audits should be conducted in accordance with GAAP and the standards applicable to financial audits contained in Government Auditing Standards issued by the Comptroller General of the United States.
22. The CPA firm should simultaneously conduct an audit of the agency’s financial internal controls.

- The CPA firm should prepare a report on its views of and any recommendations for the internal controls. The firm should also prepare a management letter with observations and/or recommendations that is presented to the agency's board.
23. The executive director and board should take timely action in reacting to the recommendations contained in the internal controls review report and management letter, and those actions should be reported to the LPC, OLA, and DLS.
- There have been instances where audit findings have been presented to an agency and action is not taken in a timely manner, or at all, to rectify the finding. When findings are discovered and presented to the agency and board, it is imperative that an action plan is created to apply corrective action and follow through with those actions. To provide accountability and transparency, the board should seek to act immediately upon receipt of the audit report, and after applying corrective actions, submit a report to LPC, OLA, and DLS explaining the actions taken to fix the deficiencies identified by the auditor.
24. To the extent possible, the CPA firm for each agency should be changed at least every 10 years, which is similar to the SEC's rule for audit firms of publicly traded entities.
- The U.S. Securities and Exchange Commission (SEC) requires that publicly traded entities change CPA firms every 10 years. Boards should seek to adopt a similar policy, to the extent practicable, understanding that procurements are to generally be based upon competitive bidding. Legislative changes could be necessary to allow this flexibility in statute.
25. Annual audits and financial statements should be submitted to LPC, OLA, DLS, and the board.
- All annual audits and financial statements should be submitted to the above entities to ensure adequate oversight and to promote the board's oversight responsibilities.

Transparency

26. Annual financial statements and audit reports should be posted visibly on the agency's website.
- The public should be able to easily access an agency's annual financial statements and audit reports. It is not uncommon for public boards to provide this information in an open and accessible format, and members of the public should not have to rely on a Public Information Act request to view basic information about the functions and status of an agency created by the state.
27. Each agency should be subject to at least a biennial legislative budget hearing, and more frequently if requested by the legislature.
- Although many of these agencies are considered non-budgeted agencies because they do not receive direct appropriations from the state, since they are often legislatively created, an annual or biennial legislative budget hearing will provide them the opportunity to update the legislative budget committees on their recent projects and initiatives. This will also serve as a transparency and accountability measure that provides insights into the agency's financial standing.
28. All boards should livestream and archive their public meetings and post the agenda, materials, and minutes for each meeting.
- An agency's website should serve as a repository of information that displays information about the agency's work and provides access to the board's activities.

Prior to the COVID-19 pandemic, many agencies were starting to livestream their open public meetings, but since the pandemic, the livestreaming of meetings has become much more common. Livestreaming allows more of the public to watch the meetings, especially those that may not live in close proximity to the meeting venue. Additionally, archiving the livestreamed meetings, along with the meeting agendas, materials, and minutes enables the public to have more opportunities to easily access information about the board’s activities.

Agency Oversight

29. Each agency should undergo a periodic review conducted by the legislature, at least every eight years, similar to a “sunset review,” to assess statutory compliance with the mission and vision. The reviews should not endanger an agency’s current outstanding bonds or ability to use bonds.

- Mission-creep occurring within these QGAs was a concern of the Commission. When these QGAs are created, it is typically because a gap is identified that is not currently served by the public or private sectors, and the agency is thus created to fill that need. There could, feasibly, come a time where the agency’s mission is achieved and the agency no longer needs to exist. The Bainbridge Development Corporation (BDC), for example, knew from the time it was created that it would not become a permanent fixture of the state and that they would, upon the completion of the development of the Bainbridge site, dissolve because their work is completed and will no longer need to provide their services. Not all agencies will fit the same mold as BDC, but a period review conducted by the legislature can help assess if mission creep has occurred, if the agency’s statute needs to be updated and amended, and what the status of the agency should be moving forward. Many of these agencies were created to provide them with flexible bonding opportunities, so it is critically important that these reviews do not jeopardize or negatively impact the agency’s current outstanding bonds or their ability to issue new bonds. Many of the bonds issued are long-term bonds, so any substantial changes to the agency need to account for that important flexibility. The Commission recommends that these reviews occur at least every eight years, ideally beginning with the agencies that have existed the longest.
- Maryland has an existing Program Evaluation Act, typically referred to as a sunset review, which reviews state licensing boards on a fixed schedule every few years (Md. Code State Govt. Art. §§ 8-401 *et seq.*). A similar process can be undertaken for QGAs.
- The state should develop a list of items to be reviewed, which should include but is not limited to: adherence to the agency’s mission as provided in the enabling legislation or other founding documents; compliance with all applicable state laws and regulations; proper adoption and adherence to agency regulations if it is required by law to enact regulations; documentation and recordkeeping procedures, such as maintenance of minutes and other documents that explain and support the agency’s operational decisions; review of compliance with all agency and board established policies; technology controls; the agencies budgeting process for those that are not subject to DBM or legislative budget review process.

30. Consider the creation of an inspector general position to serve all QGAs and oversee all of the audit and reporting functions, both financial and non-financial.
 - An Inspector General can play an important role in oversight and accountability and can serve as a watchdog to protect the state and public's interest. There has been a growing movement to create such positions, even within the state's cabinet agencies. For example, the Maryland Department of Health is now required by law to have an inspector general. The Department of Public Safety and Correctional Services and Department of Human Services also have an Office of the Inspector General embedded within their agency. Should an Inspector General position be created, it could serve as a repository and resource for these agencies, and as well as provide oversight of all auditing and reporting functions that the agencies are responsible for. An important consideration for this recommendation is to ensure that the Inspector General is truly independent and free from political influences. Both the legislative and executive branches should participate in determining what type of individual and who should serve in this important role. The state could look at other states and organizations for best practices.
31. When assessing an agency's future and the creation of new agencies, refer to *Appendix C Questions for Determining Continuance or Creation of a QGA* for questions and factors that should be considered.
 - The items presented in *Appendix C* could provide guidance to the legislature when conducting the periodic review of the QGAs. Assessing the future of a current agency or when contemplating the creation of a new agency should be an informative exercise that seeks to determine the necessity when the legislature or executive branch seek to change or create a new QGA.

Best Practices

1. In addition to livestreaming meetings, agencies should post written meeting minutes online.
 - The Open Meetings Act does not require written meeting minutes when the meeting is livestreamed and archived because that enables the public to go back and watch the meeting. However, the posting of written meeting minutes serves as another layer of transparency and gives the public the option to read the highlights and details of the meeting without having to watch the entire meeting video. These minutes do not necessarily need to be a transcript of the meeting, but should provide a substantial level of detail that provides appropriate context of the meeting discussions and any decisions that were made and/or voted on.
2. The executive director should only serve on the board as an *ex officio* and nonvoting member.
 - The governing boards should always seek to remain independent from the executive director and management personnel, which helps give the board legitimacy and keep them free from any undue influence from the agency's day-to-day leadership. The executive director should be attending the board meetings, but should not have any voting powers, and should attend the meetings only to provide informational updates. It appears that most boards are now operating in this format.
3. Standardize the name of all agency heads to be "executive director," unless otherwise determined by the legislature that a different title is appropriate.

- Many QGAs utilize the title of “executive director” already, but if future agencies are created, the default title should be “executive director,” unless the legislature authorizes an alternative title.
4. Each board should have at least one member with experience and/or expertise in reading and understanding financial statements.
- The fiduciary responsibilities of the board are some of the most important, and it is critical that each board have at least one member that has extensive experience and/or expertise in financials. Boards need to be held accountable for the financial standing of the agency in accordance with their oversight responsibilities.

Conclusion

The STAR Commission's final report represents the work of the Commission over the past year, and identifies commonsense reforms that will help bring transparency and accountability to the state's QGAs. The above recommendations will allow the state's current QGAs to maintain the flexibility they need to carry out their statutory duties, as well as providing guidance when creating new QGAs. The Commission is confident that the recommendations will increase the level of transparency, accountability, and integrity that the citizens expect and deserve.

APPENDIX

APPENDIX A – Governor’s Executive Order



The State of Maryland
Executive Department

EXECUTIVE ORDER
01.01.2020.05

State Transparency and Accountability Reform Commission

- WHEREAS, The people of Maryland deserve a government that operates with transparency and integrity;
- WHEREAS, Maryland law has established quasi-governmental agencies that are designed to fulfill public purposes by operating with structures that provide managerial flexibility necessary for optimal performance;
- WHEREAS, While quasi-governmental agencies in some ways operate as private organizations, those that are instrumentalities of State government must provide accountability sufficient to protect the public interest; and
- WHEREAS, It is essential that there be adequate safeguards and oversight of quasi-governmental agencies to ensure that they operate consistently with the public trust;

NOW, THEREFORE, I, LAWRENCE J. HOGAN, JR., GOVERNOR OF THE STATE OF MARYLAND, BY VIRTUE OF THE AUTHORITY VESTED IN ME BY THE CONSTITUTION AND LAWS OF MARYLAND, HEREBY PROCLAIM THE FOLLOWING EXECUTIVE ORDER, EFFECTIVE IMMEDIATELY:

- A. There is a State Transparency and Accountability Reform Commission (the “Commission”).
- B. Membership and Procedures.
 - (1) The Commission shall consist of the following members:

- (a) The Secretary of Budget and Management, or the Secretary's designee;
 - (b) The Secretary of Commerce, or the Secretary's designee;
 - (c) The Secretary of Labor, or the Secretary's designee;
 - (d) The Secretary of the Environment, or the Secretary's designee;
 - (e) The Secretary of Natural Resources, or the Secretary's designee;
 - (f) The Maryland Insurance Commissioner, or the Commissioner's designee;
 - (g) Two members of the House of Delegates, one appointed by the Speaker of the House and one by the House Minority Leader;
 - (h) Two members of the Senate of Maryland, one appointed by the President of the Senate and one by the Senate Minority Leader;
 - (i) An expert in ethics, appointed by the Governor;
 - (j) An expert in financial matters, appointed by the Governor; and
 - (k) Two members of the general public, appointed by the Governor.
- (2) The Governor shall select the Chairperson from among the members.
- (3) The members appointed by the Governor serve at the pleasure of the Governor.
- (4) The Office of the Governor shall provide support staff for the Commission.
- (5) A majority of the authorized membership of the Commission shall constitute a quorum for the transaction of any Commission business.
- (6) Members of the Commission may not receive any compensation for their services, but may be reimbursed for reasonable expenses incurred in the performance of their duties, in accordance with the Standard State Travel Regulations, and as provided in the State budget.

C. To ensure adherence to the highest ethical standards, and identify commonalities that support unified policies and regulations for standardized oversight and accountability, the Commission shall review and investigate the operations and structures of the following State instrumentalities (“quasi-governmental agencies”):

- (1) Maryland Agricultural and Resource-Based Industry Development Corporation;
- (2) Bainbridge Development Corporation;
- (3) Canal Place Preservation and Development Authority;
- (4) Maryland Economic Development Corporation;
- (5) Maryland Clean Energy Center;
- (6) Maryland Environmental Service;
- (7) Maryland Food Center Authority;
- (8) Maryland Health and Higher Educational Facilities Authority;
- (9) Maryland Automobile Insurance Fund;
- (10) Maryland Stadium Authority;
- (11) Maryland Technology Development Corporation;
- (12) Northeast Maryland Waste Disposal Authority;
- (13) Maryland Industrial Development Financing Authority;
- (14) Maryland Venture Capital Trust; and
- (15) Any others, as deemed appropriate by the Commission, that are:
 - (a) body politic and corporate, or similarly independent; or
 - (b) otherwise authorized to:

- i. bill their costs and expenses to persons or governments subject to their jurisdiction;
- ii. pay commissions or bonuses to employees or agents;
- iii. seek private grants, gifts, bequests, endowments, and legacies, or other contributions from the private sector;
- iv. enter into private sector cooperative agreements; or
- v. acquire, hold, sell, convey, assign, lease, transfer, or dispose of property, or enter into contracts incident thereto, independently of the Board of Public Works or Department of General Services, or are otherwise exempt from the General Procurement Law of the State.

D. For each quasi-governmental agency, the Commission shall study and if appropriate make recommendations about:

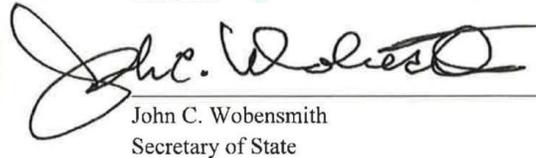
- (1) Term limits for members or directors;
- (2) Employees serving as members or directors;
- (3) Requirements for financial and conflict-of-interest disclosures;
- (4) Standards:
 - (a) To maintain and improve the efficiency and effectiveness of governmental operations; and
 - (b) For ethical responsibilities regarding:
 - i. out-of-state travel;
 - ii. bonuses and severance pay;
 - iii. conflicts of interest; and
 - iv. reimbursable expenses;
- (5) Instruction on ethics;

- (6) Independent financial and compliance audits;
 - (7) Preparation of budgets;
 - (8) Periodic reports on activities, findings, accomplishments, business transactions, and financial condition;
 - (9) The balance between independence and accountability necessary for efficient or effective operations; and
 - (10) Any other matter that the Commission considers appropriate and relevant.
- E. All Executive Branch units subject to the supervision and direction of the Governor shall cooperate with and assist the Commission in fulfilling its duties.
- F. On or before December 1, 2021, the Commission shall report to the Governor and General Assembly on the Commission's findings and recommendations.

Given Under my Hand and the Great Seal of the State of Maryland, in the City of Annapolis, this 16th Day of December, 2020.




Lawrence J. Hogan, Jr.
Governor


John C. Wobensmith
Secretary of State

APPENDIX B – Agency Questionnaire

THE STATE TRANSPARENCY AND ACCOUNTABILITY REFORM (STAR) COMMISSION

GENERAL

- a. Your mission/vision statements.
- b. Your authorizing statute.
- c. How do you implement the mission and vision statement? How often is it reviewed or evaluated? What is done to ensure that the mission/vision statement remains consistent with your authorizing statute?
- d. Brief history about your agency, and as applicable, its transformation or expansion over time, and its relationship to the State. Please provide the history as to why your agency was created as a quasi-public/independent (i.e, main reason or purpose).
- e. Rationale - why do your agency's functions continue to be best facilitated as a quasi-public agency and not through an existing traditional, state agency or the private sector?
- f. How do other states fulfill similar functions (e.g., similar quasi-government approach; traditional state agency; or private sector)?
- g. Does your organization have a strategic plan with objectives and measures? How often are your plans reviewed and updated? Please provide documents.
- h. What have you done to research, review, adopt, and implement best practices? Which areas of your agency were best practices applied? Please describe best practices being followed.
- i. Is your agency exempt for State Procurement Regulations? If so, have you implemented procurement policies? What were these based on? Please provide a copy.
- j. Do any board or agency actions require Board of Public Works approval?
- k. List of executive branch state governmental agencies your organization interacts with most.
- l. How many employees are in the agency? Of those, how many are senior management? Please provide detailed organizational charts that identify functions and the number of personnel in each unit.
- m. Are employees in your agency subject to collective bargaining laws?
- n. Are employees in your agency part of the State personnel system?
- o. Are health and retirement benefits provided by the State of Maryland?
- p. Who serves as legal counsel to the agency, the attorney general's office, outside counsel, or both? If the attorney general's office, is there an assistant attorney general embedded in your agency? If so, how many are assigned to your agency? Is there a physical office located on-site at your agency for the assistant attorney general? If outside counsel, who provides those services?
- q. Does your agency have a system to ensure employees can report concerns or suggestions without fear of retaliation?
- r. Does your agency have a diversity officer and/or diversity policy? When was the last time your agency conducted diversity training or enforced the diversity policy?

AUDIT

- a. Does your agency have internal controls processes in place with respect to fiscal, operational, and/or administrative oversight? If so, please describe the processes and provide documentation? If not, why?
- b. Confirm that you have utilized external auditors for the last 3 years with copies of management letters as well as the audited financial statements. Please also provide your agency's response to the management letter.
- c. Does the agency have an internal auditor? If so, please describe the internal audit function, its interface with external auditors, and to whom the internal auditor reports.
- d. Who does the Chief Internal Auditor report to functionally and administratively? Does management meet with the Internal Auditors on a regular basis?
- e. Does anyone else conduct your agency's audits? If so, who? Please provide details about "exceptions" and management's curing of those.
- f. Confirm and comment on audits by any State agency. Please provide a copy, including your agency's corrective action plan, if applicable.
- g. How is compliance with the statutory mission, duties, applicable State policies, internal controls, and best practices determined?

FINANCIALS

- a. Summary of the 2020 financials showing revenue sources (how much from the state of Maryland, other major sources) and expenses by element (payroll, consultants, T&E, etc.)
- b. Provide three years of financials (specify fiscal or calendar year).
- c. Are financial statements kept in accordance with Generally Accepted Accounting Principles (GAAP), or another set of standards?
- d. Does your agency provide any charitable, community benefit, or political contributions? If so, please describe. What is the process for determining the contribution and approving it? How are conflicts of interest, or the appearance of conflicts of interest, avoided?
- e. How frequently do representatives of the Board meet with the chief financial and/or accounting officers, internal auditors, and external auditors?
- f. Provide documentation of all payments to directors individually, their families, or businesses in the last 3 years. Please provide a detailed listing.

BOARD

- a. Provide documentation of duties, responsibilities, and requirements for board members, including but not limited to, by-laws, committee charters, and regulations.
- b. How are governing boards/committees appointed and by what appointing authority? Do board/committee members have term limits? Are there any current vacancies on the board? If so, how long have they been vacant? Are any members held over beyond their terms?
- c. Schedule of committees of the Board with name of members for each; summarize the scope of responsibility of each committee and qualifications for membership on a Committee (e.g. may non-board members serve on a board committee?).
- d. If there is an Audit Committee, does it conduct an annual review of the scope of

activities of the internal and external auditors and/or otherwise specifically review on at least an annual basis the reasonableness of the financial reporting process, system of internal control, significant comments and recommendations, and management's performance?

- e. Do Board members sign any agreement or receive any initial training or orientation?
- f. Is any periodic training provided to Board members?
- g. Copies of board minutes for the past 3 years.
- h. Copies of minutes of any board committees for the past 3 years.
- i. What are the roles of executive employees with respect to the governing board?
- j. How do you ensure that the board is operating efficiently, effectively, and ethically? Is there any independent or self-assessment conducted on Board operations? Is the board subject to an annual evaluation process; if so, how is that performed?
- k. Are board members subject to disciplinary action; if so, describe the actions or failures that trigger discipline, actions available to be taken, and who has the authority to take them.
- l. How granular is the information provided to the board of directors or committee members by management? Is there a report by the Executive Director given at each meeting of the board and, if so, what level of operational detail does it provide? Outside of board meetings, how is the Board kept informed of operational and management issues?
- m. Is there a formal process through which the board of directors or audit committee is apprised of sensitive information, investigations and improper acts (e.g., travel expenses of senior officers, significant litigation, investigations of regulatory agencies, defalcations, embezzlement or misuse of corporate assets, violations of insider trading rules, political payments, illegal payments) sufficiently and in a timely manner?
- n. Do Board members receive monetary compensation, specifically for their service on the board? Are there any other items of value to which board members are entitled, such as tickets to sporting events, fundraisers, travel to conferences, membership in organizations?
- o. Do Board members receive reimbursement for mileage or travel or any other expenses? What procedures are followed and who must approve the request for reimbursement?
- p. How does your agency ensure public access to--and public input into--your Board meetings?
- q. Does the board approve the budget? Does the board approve budget revisions or changes to the budget? What level of expense requires Board approval?
- r. Do contracts require Board approval? Before or after award? Is there a threshold or are only certain types of contract subject to Board approval?

COMPENSATION/PERFORMANCE

- a. Provide documentation of compensation of the executive staff and senior management.
- b. Please provide documentation of your compensation policies, including but not limited to bonuses, severance, expense reimbursement, tuition reimbursement, car and/or driver, and deferred compensation.
- c. Are you aware of any severance paid by your agency to employees who went elsewhere in

state service within a year of their departure? If so, provide details.

- d. Is there a Management Incentive Plan in place? If so, please describe it, identify the categories of employees who qualify for participation, and provide the plan documents.
- e. How are the executive and management employees hired, and who has oversight of their performance? Is there a required periodic performance review? Please provide any related documentation.
- f. Do you have policies and procedures around talent and performance management that include an organization career model with compensation models? Please provide documents.

GOVERNANCE AND ACCOUNTABILITY

- a. Describe and provide copies of management governance policies relating to communications, frequency of staff meetings, reporting structures, escalation procedures, etc.
- b. Does your agency provide ethics training, or otherwise ensure that board members and other executives attend the mandatory ethics training provided by the Ethics Commission?
- c. Do all Board members file annually with State Ethics? What level of disclosures are filed, limited or full?
- d. What conflict of interest provisions are in effect for employees and governing board members? Provide reports related to conflicts of interest, if any are required.
- e. What methods do you use for maintaining transparency to the state of Maryland?
- f. What is your records retention policy? Does the policy apply to board meetings, executive and staff meetings, and meetings and calls with clients/customers? What level of detail is used in documenting the meeting discussion? Where and how long are documents retained?
- g. What is the policy surrounding retention of emails?
- h. What are the policies and procedures for documentation of agency activities and decision-making?

CONCLUSION

Please provide an addendum from the executive director/agency head and chair of the Board of Directors acknowledging completion of this questionnaire, signed by both individuals.

APPENDIX C - Questions for Determining Continuance or Creation of a QGA

1. Is there still a need for this QGA?
 - What was the problem or issue that resulted in the formation of this QGA? Does the problem or need still exist at the same level?
 - Is there another agency either private or governmental that could or is already providing this service?
2. Is this QGA continuing to fulfill legislative intent?
 - Has it remained faithful to its initial mission? If the agency has deviated, was it as per legislative directive?
 - Would this entity be created again under current circumstances?
3. Should this Agency continue as a QGA?
 - Should they continue as a QGA but with changes?
 - Are there financial consequences, such as bonding, if the agency was terminated?
 - Are the benefits of the QGA worth the operational costs inherited by the state?
4. Should this Agency move back to a Governmental Agency?
 - Should this Agency become a private entity?
 - Should this Agency cease to operate?
5. Has this Agency operated with transparency and accountability?

Appendix D – Maryland Auto Insurance Presentation & Response Regarding Considerations for Privatization



**Sub-Committee
Presentation – STAR
Commission**

Overview



- Created – 1972 (HB 44/Chapter 73) Began insurance operations on January 1, 1973
- Primary Function – Insured Division sells automobile insurance policies to Maryland residents & businesses:
 - Turned down by two private auto insurers
 - Cancelled or non-renewed by one private auto insurer
- Independent & non-budgeted agency
- Insurance operations are not supported by State funds. (Ins. Art. §20-302 “The State may not provide General Fund appropriations to the Fund.”)
- Operates and pays insurance claims with funds generated by policyholder premiums & investments (Ins. Art. §20-302 “All operating expenses of the Fund shall be paid from money . . . collected by the Fund.”)
- MAIF is not subject to “any law . . . that effects governmental units” (Ins. Art. §20-201) except: Public Information Act; State Ethics Law; Tort Claims Act; Regulations – Uninsured; Whistleblower Law
- Secondary Function – Administer the Uninsured Division for the State
 - Pays claims to Maryland residents involved in accidents caused by uninsured motorist when no other collectible insurance available
 - Receives a portion of uninsured motorist fines (\$4.1 million – 2020) to operate and pay claims.

2

Evolution of MAIF



Task Force Bill (Ch. 73, 2013):

- Reformed MAIF's Board by imposing staggered 5-year and 2 term limits; expertise (financial and insurance); diversity; 9 Gubernatorial appointments and removal; compensation; appoints Executive Director; and Audit Committee Established;
- Required MAIF Internal Auditor to do annual compliance audits and report to the Board;
- Removed MAIF from Office of Legislative Audits as MAIF was already subject to MIA regulation, Board Audit Committee oversight, Internal and External Auditor's audits;
- Removed MAIF from AG representation and allowed MAIF to employ attorneys;
- MAIF employees no longer subject to SPMS but remain members of the State retirement and health benefits systems;
- MAIF removed from procurement law for real estate;
- MAIF not subject to government agency laws, except the PIA; Open Meetings Act; State Ethics law; Tort Claims Act; and Whistleblower law.

Since the Task Force:

- Removed from Open Meetings Act; prior MIA approval for rates and forms; and regulations, except for the Uninsured Division (Ch. 509, 2017).

3



Why is Maryland Auto Still a Quasi-State Agency?

Benefits of Being a State Agency



- Tax Exemptions--Premium Tax, Sales Tax, Federal Income Tax
- Insurance Article Exemptions – i.e., Title 27, Subtitle 6
- Covered by the Maryland Tort Claims Act
- Assessment Mechanism in case of Financial Impairment
- Reduced fees for certain motor vehicle records
- Employees are covered by the State Retirement and Health Benefit Systems

5

Current Statutory Challenges



- Limited to residual business which results in a minimal market share (< 2%)
- Two-Turn Down Rule
- Limited Installment Billing Plan
 - 25% down and up to 6 payments for annual premium less than \$3,000
 - 20% down and up to 8 payments for annual premium of \$3,000 or more
- Commissions
- Producers
- Depopulation effort
- One line/one state

6

Reasons to Enter the Private Sector



- MAIF is the only entity of its kind in the United States.
- MAIF performs an essentially private function—writing auto insurance in the insurance market place to private citizens.
- MAIF is only able to lower rates for the Underserved Populations of the State by being enabled to grow and spread risk appropriately.
 - Currently very limited growth opportunity due to archaic, strenuous statutes.
 - Consistently losing money in a failing business model.
- As the result of depopulation requirements, MAIF cannot retain policyholders who came to MAIF due to poor credit or driving record but have become better risks while insured by Maryland Auto.

7

Reasons to Enter Private Sector (continued)



- In the long run, unless premium growth can be achieved, MAIF will have to assess all Maryland drivers to support its operations. Between 1980 and 1990 assessments totaled \$131 million. There has not been an assessment since but the potential remains.
- Long term, the State will be gradually relieved of pension & benefit obligation for new hires
- MAIF operates the same as a private insurer, with tremendous oversight and regulation from the Maryland Insurance Administration, unlike other quasi-government agencies with no regulator.
- As a private entity, MAIF could grow its book of business while still fulfilling its mission of remaining the insurer of last resort and the administrator of the Uninsured Division.

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Benefits for MD Citizens



- MAIF has provided insurance to hundreds of thousands of Maryland resident who were rejected by the private market.
- Demographics include:
 - 75% between the ages 21 – 50
 - 57% male and 43% female
 - 79.5% of policyholders in the Baltimore or DC Metro Areas
 - 44% Prince George’s County
 - 24% Montgomery and Howard Counties
 - 14% Baltimore City and Baltimore County
- MAIF has been a solid employer and a good corporate citizen.
 - Currently employs 190 insurance professionals including underwriters, claims adjusters, regulatory accountants, auditors and attorneys all located in Baltimore City.

IWIF/Chesapeake Conversion



IWIF, a State agency that was very similar to MAIF, was successfully converted by the Legislature to Chesapeake Employers Insurance Company, a private corporation, in 2013. After the conversion:

- All of IWIF's policies, claims, assets and liabilities were transferred by operation of law to Chesapeake. IWIF was no longer an insurer.
- Chesapeake, like IWIF, is permitted to write competitive business and is not subject to two turn-downs or other declinations.
- Chesapeake was required to continue to be the insurer of last resort in place of IWIF.
- IWIF was barred from hiring new employees into the State system, new hires are through the not-for-profit insurer. Those hired prior to the conversion were "grandfathered" and allowed to remain in the State system.
- Employees in the State system can work on Chesapeake business through inter-company agreements.
- Chesapeake is a fully private, regulated insurer that is subject to all the taxes, fees, statutes and regulations that apply to any other insurer authorized to do business in the State.

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Other Non-Stock, Non-Profit Insurers



	Chesapeake Employers Insurance Art. §24-301	CareFirst Insurance Art. §12-101	Medical Mutual Insurance Art. §24-201
Private Corporation	Yes	Yes	Yes
Organized Under Maryland Law	Yes	Yes	Yes
Type of Insurer	Workers Compensation	Health	Medical Malpractice
Non-Profit	Yes	Yes	Mutual
Non-Stock	Yes	Yes	Yes
Regulated by MIA	Yes	Yes	Yes
Receive State Funds	No	No	No
State Entity	No	No	No

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Conversion of Maryland Auto



To convert MAIF in a fashion similar to IWIF/Chesapeake would require:

1. Legislation to change MAIF's status from a State entity to a private corporation. Using Chesapeake and CareFirst as models, the corporation would be non-stock, non-profit, chartered under State law, and MAIF would be a fully regulated private insurer.
2. The legislation would require MAIF (like Chesapeake) to continue to be the insurer of last resort.
3. MAIF would also continue to administer the Uninsured Division, on behalf of the State and continue to pay claims to eligible Maryland residents injured by uninsured motorists with no other source of an automobile insurance recovery.
4. The legislation would delete the various limitations on MAIF's insurance operations and the assessment mechanism. MAIF would be a private insurer, fully regulated by the MIA, and would operate as any other insurer without any MAIF specific restrictions, e.g. restricted installment payment plans

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Conversion of Maryland Auto (continued)



5. MAIF would prospectively withdraw from the State retirement and health benefit systems. Current employees could continue to be covered as employees of the State funded Uninsured Division (method similar to IWIF/Chesapeake).
6. IWIF was required to pay a withdrawal liability contribution under SPP Art. §21-307. The General Assembly could opt not to include a similar requirement in MAIF conversion legislation.
7. IWIF was required to pay a sum (\$50 million) representing the fair value of the benefits received by IWIF from the State over the years. The principal benefit was the 90+ years of premium tax exemption, even on the premiums earned on non-residual, competitive business. This exemption helped IWIF amass a sizeable surplus.
8. Since MAIF did pay the premium tax for almost all of its existence and has never wrote any non-residual business, there would be no reason for the General Assembly to impose a similar buy-out on MAIF.

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The Honorable Andrew A. Serafini
Chair, State Transparency and Accountability Reform Commission
c/o Governor's Legislative Office
100 State Circle
Annapolis, MD 21401

Re: State Transparency and Accountability Reform (STAR) Commission

Dear Chair Serafini:

During the STAR Commission meeting on November 8th, there were three questions raised and you asked me to provide a written response. These questions are listed below followed by our response and explanation. Preliminarily, however, I would note that we have not fully studied or vetted all aspects of a potential conversion to a private entity. While we have considered the broad outline of a conversion and understand the basic principles, some of the details would need further, more complete, analysis and may require the retention of outside experts. We have not been prepared to invest the time and resources to do this until it appears that a conversion would be considered by the General Assembly.

1. How would Maryland Automobile Insurance Fund appropriately capitalize to operate as a private company?

This question arises because Maryland Automobile Insurance Fund (MAIF) is not currently subject to the Risk Based Capital (RBC) requirements contained in Title 4, Subtitle 3 of the Insurance Article. Unless these capital standards are met, an insurer would be placed under the oversight of the Maryland Insurance Administration (MIA), may be viewed as financially impaired and could be subject to regulatory action.

Currently, MAIF maintains a statutory surplus and is required to do so to continue to avert an assessment on Maryland drivers/insurance companies. While MAIF would have to eventually meet the higher RBC standards, there would be no reason to require immediate compliance and a phase-in would seem appropriate. This is exactly what happened with Injured Worker's Insurance Fund (IWIF).

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When IWIF first became subject to RBC in 2002 (Ch. 22, Laws of Md. 2002), there was a five-year phase in the Labor & Employment Article §10-125. IWIF was required to meet only a percentage of the RBC levels and full compliance was phased in as follows:

"(d) With respect to any Risk Based Capital calculation . . . the Fund shall be subject to the following reductions:

(1) for 2001, the required Risk Based Capital for the Fund shall be 50% of the requirement . . .

(2) for 2002, the required Risk Based Capital for the Fund shall be 60% of the requirement . . .

(3) for 2003, the required Risk Based Capital for the Fund shall be 70% of the requirement . . .

(4) for 2004, the required Risk Based Capital for the Fund shall be 85% of the requirement . . .

(5) for 2005, the required Risk Based Capital for the Fund shall be 100% of the requirement . . ."

A similar approach would allow MAIF to gradually expand its capital and book of business. An expanded book of business would depend on elimination of the two turn-down rule, retention of current policyholders with clean driving records, competitive installment plans and commissions, creative marketing, the exclusion of named drivers and other initiatives that would be available to MAIF as a private entity. This expansion would be gradual and as MAIF's premium base grows, capital could be accumulated. Progress towards full RBC compliance could be monitored by the MIA.

2. What happens if goes private and then goes insolvent?

As a private entity, MAIF would be subject to the same regulatory standards as all insurers. If MAIF became financially impaired, MAIF would be subject to regulatory control by the MIA including conservation, rehabilitation, and liquidation. If liquidation occurred, claims would be paid by the Property Casualty Insurance Guaranty Corporation under Subtitle 3 of Title 9 of the Insurance Article.

Financial impairment is a risk for all insurers. In MAIF's case, the risk is low as there has not been an assessment in 30 years even though MAIF had no ability to write or retain good, profitable business. With an expanded business model, the likelihood of insolvency would be reduced. One hedge against potential impairment would be to maintain the possibility of an assessment for, say, 10 years. This would provide public confidence in the stability of MAIF. During that period, if an assessment occurred or seemed likely, the General Assembly could react if appropriate.

3. What happens if we are TOO successful?

As a non-profit private entity, MAIF would not be distributing any profits to owners or investors. Like CareFirst and Chesapeake Employers Insurance Company, any financial success by MAIF would be passed onto its policyholders through lower rates. This would be especially beneficial to policyholders in underserved populations. The more the success, the better.

In any event, the automobile insurance market in Maryland is extremely competitive with more than 100 companies actively writing automobile insurance. No insurer, including national companies, has been able to achieve a dominant market share and the largest market share is GEICO with 24%. A privatized MAIF would simply add to the competition. Even if MAIF increased its market share by 500%, an extremely unlikely event, its market share would be in the single digits. It is hard to see how MAIF could ever be so successful that market disruption would occur.

Please let me know if you, or The Commission, have further questions or if I can provide any further information.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Al Redmer, Jr.', is positioned above the typed name.

Al Redmer, Jr.
Executive Director

Appendix E - Items Requiring Further Consideration and Discussion

The Commission, limited by its timeframe and deadline to submit the final report, was unable to further explore the following topics. Should the executive or legislative branches be interested in these topics, it is recommended that further study and evaluation be conducted.

Allowing Maryland Auto Insurance to move to the private sector

As provided in Appendix E, Maryland Auto Insurance (MAIF) provided the Commission with information for consideration if there was to be an effort to allow them to privatize. Maryland is unique in that it is the only state that addresses uninsured motorists through a mechanism such as Maryland Auto Insurance. While MAIF has not conducted an extensive study on privatizing, if there is increased interest in pursuing this transition, the executive and legislative branches should create a task force/commission to further explore the positive and negative impacts of allowing them to join the private sector.

Moving Northeast Waste Disposal Authority into the Maryland Environmental Service

It was brought to the Commission's attention that the Northeast Maryland Waste Disposal Authority (NMWDA) has a provision within its statute (Natural Resources Section 3-924) that allows them to merge within the Maryland Environmental Service (MES). Given that, to the Commission's knowledge, NMWDA does not have any outstanding bonds, it may be appropriate to consolidate them into MES since their work overlaps. This could help eliminate any redundancies and integrate the efforts of both agencies to better serve the state.

Moving the Maryland Clean Energy Center into the Maryland Energy Administration

The Commission engaged in a brief dialogue regarding the overlap of the work that both the Maryland Clean Energy Center (MCEC) and Maryland Energy Administration (MEA) conducts, and if the state would be better served by moving MCEC within MEA. The Commission did not have enough information to properly address this question, which would require a study potentially similar to that required if MAIF were to move to the private sector as mentioned above.

Identifying and remedying potential abstract inefficiencies within the agencies

The Commission learned that an oddity exists within MES whereby they process payroll and provide benefits packages to employees of the Chesapeake Bay Trust and Maryland Clean Energy Center, even though MES has no authority over either organization. This is a potential inefficiency that could be further explored and remedied, particularly if the common bank of resources discussed within the recommendations is adopted. Other agencies may have other oddities such as the aforementioned one, and they should be identified and further explored to ensure that each organization is operating in an efficient manner that does not blur the lines with other organizations within the state.

APPENDIX F - Commission Members and Staff

Appointment Seat	Name
Department of Budget and Management	David R. Brinkley
Department of Commerce	Rhonda J. Ray (January-July 2021) Jennifer C. LaHatte (September-December 2021)
Department of Labor	Michael L. Harrison
Department of Natural Resources	Jeannie Haddaway-Riccio
Maryland Department of the Environment	Bobbie James
Maryland Insurance Administration	Kathleen A. Birrane
Senate of Maryland (appointed by President of the Senate)	Brian J. Feldman
Senate of Maryland (appointed by Senate Minority Leader)	Adelaide C. Eckardt
House of Delegates (appointed by Speaker of the House)	Marc Korman
House of Delegates (appointed by House Minority Leader)	Kathy Szeliga
Ethics	John Williams
Financial	Karen Syrylo
Public	Dr. Linda L. Singh, PMP, PCC
Public	Andrew Serafini

STAFF

Governor's Office	Erin Chase
Governor's Office	Andrew Cassilly
Governor's Office	Don Hogan
Governor's Office	Anna Weiler (January-July 2021) Savannah Masterson (September-December 2021)